

REMARKS

Claims 1-28 and 30-38 are pending in the application. Claims 1, 14, 27, 28, 30, 31, and 32 are independent claims. Claims have been rejected under 35 U.S.C. 103(a). Those rejections are respectfully traversed and reconsideration is requested.

Allowable Subject Matter

Applicants thank the Examiner for the indication of allowable subject matter, namely, that Claims 37 and 38 would be allowable if rewritten in independent form to include the limitations of their base claim and any intervening claims. For the reasons stated below, base Claim 32 is considered allowable and, thus, dependent Claims 33-38 are also considered allowable.

Rejections under 35 U.S.C. 103(a)

Claims 1-26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moy (U.S. Pub. No. 2003/0035411) in view of Sandstrom (U.S. Patent No. 6,697,373).

Claims 27-28 and 30-31 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moy in view of Graves (U.S. Patent No. 4,764,921).

Claims 32 and 34-36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moy in view of Jakobik (U.S. Patent No. 6,195,367).

Claim 33 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Moy and Jakobik in view of Sandstrom.

The present application claims the benefit of Provisional Application No. 60/183,487, filed February 18, 2000. Therefore, the present application has a priority date of February 18, 2000. Cited reference Moy, filed January 12, 2001, claims the benefit of Provisional Application Nos. 60/176,669 and 60/176,670, both filed January 18, 2000. It should be noted that the 60/176,669 and 60/176,670 provisional applications were filed before the present application's priority date and that cited reference Moy was filed after the present application's priority date. Both the 60/176,669 and 60/176,670 provisional applications are available on Public PAIR.

According to section 2136.03 of the MPEP, the critical reference date of a U.S. Patent, or U.S. Patent Application, that claims the benefit of a provisional application is considered to be the filing date of the provisional application only “if the provisional application(s) properly supports the subject matter relied upon to make the rejection”. To properly support the subject matter of the rejection, the provisional application(s) must support the subject matter in compliance with 35 U.S.C. 112, first paragraph. Therefore, only disclosures made in the 60/176,669 and 60/176,670 provisional applications may be considered prior art with respect to the present application.

Some portions of Moy that have been relied upon in rejecting the claims of the present application are not properly supported by either of the 60/176,669 or 60/176,670 provisional applications. For example, paragraphs [0152-0153] of Moy have been cited as disclosing a “modify signal request” in the rejections of Claims 1-28 and 30-31; however, no such “modify signal request” is disclosed in either of the 60/176,669 or 60/176,670 provisional applications. Therefore, the “modify signal request” as disclosed in paragraphs [0152-0153] of Moy should not be relied upon in the rejections of Claims 1-28 and 30-31 of the present application as it is not properly supported by the provisional applications.

As a further example, paragraph [0048] of Moy has been cited as disclosing an “optical cross-connect” in the rejections of Claims 32-36; however, no such “optical cross-connect” is disclosed in either of the 60/176,669 or 60/176,670 provisional applications. Therefore, the “optical cross-connect” as disclosed in paragraph [0048] of Moy should not be relied upon in the rejections of Claims 32-36 of the present application as it is not properly supported by the provisional applications. Furthermore, even if the 60/176,669 or 60/176,670 provisional applications were construed as to disclose an optical cross-connect, neither of the provisional applications discloses an optical cross-connect that is in communication with a network management system as claimed in independent claim 32.

Therefore, the rejections of Claims 1-28 and 30-36 under 35 U.S.C. 103(a) are not based on prior art. Accordingly, removal of the rejections under 35 U.S.C. 103(a) and acceptance of Claims 1-28 and 30-36 is respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all claims (Claims 1-28 and 30-38) are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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